

No. 13-0949 EC

On September 19, 2013, the MEC filed a “suggestion of mootness and request to dismiss,” which we deemed a motion to involuntarily dismiss the complaint pursuant to 1 CSR 15-3.436(2). We gave Droke until September 30, 2013 to respond to the MEC’s motion, but he did not do so. The following facts are not in dispute.

## Findings of Fact

1. At all relevant times, Droke was a member of the Missouri Cotton Growers' Organization Board of Directors.
2. Droke filed a PFD statement that the MEC received on May 12, 2013, eleven days after the May 1 filing deadline.
3. In a letter dated May 16, 2013, the MEC assessed a late fee against Droke in the amount of \$110.00 pursuant to § 105.963.3.<sup>1</sup>
4. Droke filed a complaint appealing the MEC's assessment on May 31, 2013.
5. The MEC received a check from Droke for the full amount of the late fee on July 26, 2013.

## Conclusions of Law

We have jurisdiction to hear the complaint.<sup>2</sup> We perform the same role as the Ethics Commission, following the law it must follow and rendering, on the evidence heard, the decision of that agency. *See Mo. Ethics Comm'n v. Wilson*, 957 S.W.2d 794, 798-99 (Mo. App., W.D. 1997). The MEC has the burden of proof.<sup>3</sup>

The MEC asks us to dismiss the complaint because Droke paid the late fee that is the subject of his appeal. A respondent may file a motion for involuntary dismissal less than 45 days before the hearing only with leave of this Commission. 1 CSR 15-3.436(2)(B). Although the MEC's suggestion of mootness was filed less than 45 days before the scheduled hearing of this case, we may order involuntary dismissal of a complaint on our own motion. 1 CSR 15-436(1)(B).

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<sup>1</sup> Statutory references, unless otherwise noted, are to the 2012 Supplement to the Revised Statutes of Missouri.

<sup>2</sup> Section 105.961.3. Sections changed in Senate Bill 844 (2010) are reprinted in the Supplement because parts of that bill were declared unconstitutional in *Legends Bank v. State*, 361 S.W.3d 383 (Mo. banc 2012).

<sup>3</sup> *Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo. App., St.L.D. 1974).

Attached to the MEC's motion is a copy of a check purportedly from "Droke Farms" in the amount of \$110.00, but there is no affidavit authenticating the exhibit. Documents must be made a part of the record before we can rely on them in making a ruling.<sup>4</sup> "An unverified and unsupported motion does not prove itself."<sup>5</sup> A document attached to a motion has no probative value unless it is supported by an affidavit.<sup>6</sup> We consider this document as evidence of Droke's payment of the late fee only because Droke did not object to it, and where no objection is made, hearsay evidence in the records can and must be considered in administrative hearings.<sup>7</sup>

A case is moot when a decision on the merits would have no practical effect on an existing controversy or where it is impossible to grant any effective relief.<sup>8</sup> "When an event occurs that makes a [tribunal's] decision unnecessary or makes granting effectual relief by the [tribunal] impossible, the case is moot and generally should be dismissed."<sup>9</sup> Because Droke paid the late fee assessed by the MEC—the very issue raised by his appeal—our further consideration of his complaint is rendered unnecessary.

### Summary

On the Commission's motion, the complaint is dismissed for mootness. We cancel the hearing.

SO ORDERED on October 1, 2013.

/s/ Mary E. Nelson  
MARY E. NELSON  
Commissioner

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<sup>4</sup> See *Saunders-Thalden and Assoc. v. Thomas Berkeley Consulting Engineer, Inc.*, 825 S.W.2d 385, 387 (Mo. App., W.D. 1992).

<sup>5</sup> *Brown v. Upjohn Co.*, 655 S.W.2d 758, 760 (Mo. App., E.D. 1983).

<sup>6</sup> *Id.* at 759.

<sup>7</sup> *Clark v. FAG Bearings Corp.*, 134 S.W.3d 730, 736 (Mo. App., S.D. 2004) (citing *Dorman v. State Bd. of Regis'n for the Healing Arts*, 62 S.W.3d 446, 454 (Mo. App., W.D. 2001)).

<sup>8</sup> *Rosenfeld v. Thoele*, 28 S.W.3d 446, 451 (Mo. App., E.D. 2000).

<sup>9</sup> *Hihn v. Hihn*, 235 S.W.3d 64, 68 (Mo. App., E.D. 2007).